

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL APPLICATION NO.3719 OF 2006**

The State of Maharashtra ...Applicant.
V/s.
Dr.Nasir Ahmed Shaikh ...Respondent.

Ms.R.M.Gadhvi, APP for the Applicant/State.
Mr.Prakash Naik, adv. for the Respondent.
Mr.Mubin Solkar, advocate for Original Complainant.

**CORAM: J.H.BHATIA, J.
DATE : 28th February, 2007.**

P.C.:

1. Heard Ms.Gadhvi, the learned APP for the State and Mr.Naik, the learned counsel for the Respondent.

2. This is an application for cancellation of anticipatory bail granted by the learned Additional District Judge, Palghar in favour of the accused in Crime No.17 of 2006 registered by Vasai police station on the report lodged by one Ajijur Rehman Firoj Ahmed Shaikh alleging that the respondent, who is one of the trustees of Jama Masjid Trust, Moosa Galli, Vasai had misappropriated huge amount. The offence was registered sometimes in February, 2006. It appears that after giving a number of opportunities to the prosecution, the learned Additional Sessions Judge passed the final order granting the anticipatory bail on 12-5-2006. The learned Additional District Judge, while passing ad

interim order of anticipatory bail had put certain conditions directing the respondent to make himself available to the police as and when required for the purpose of interrogation, etc. The matter was adjourned from time to time from 27th February, 2006 to 12th May, 2006 and finally the Court came to a conclusion that as the audit report had given a clean chit to the respondent and as the whole matter revolved around the documents, custodial interrogation of the applicant was not necessary. This application for cancellation of anticipatory bail is filed on 3rd October, 2006, i.e., almost 5 months after the anticipatory bail was granted contending that there was no justification for grant of anticipatory bail. It appears that this application is also filed by the State at the behest of or on the request of the original complainant.

3. The main allegation is that the present respondent and other trustees had misappropriated huge amounts of trust and particularly, they have received certain amounts from purchasers of flats and shops in cash instead of cheques. They have also made construction of certain buildings on the land reserved for graveyard. It appears that the accounts of the trust were audited by Ehtesham and Company, Chartered Accountants, who are the official auditors of the trust.

The audit reports for the years ending 31st March, 2002, 31st March, 2003 and 31st March, 2004 prepared by the official auditor reveals that all the account books and cash books are properly maintained. The reports also reveal that all the account books were made available to the auditor. Not only this it appears that as per the order passed by the Assistant Charity Commissioner, one Mr.Keny was appointed as commissioner to check the accounts of the trust. The said commissioner has also submitted his report on 19-10-2005 to the Assistant Charity Commissioner and he has certified that on going through the income and expenditure account, ledger accounts and after checking the receipts, vouchers and bills, he found that monetary transactions appearing in income and expenditure account and ledger accounts are supported by the duly documentary evidence i.e. receipts, vouchers and bills, etc. On the other hand, on behalf of the State a report dated 27th February, 2007, issued by Rajesh K. Gopal and Company Chartered Accountants, reveals that on 23rd February, 2007, the said firm was requested to examine the books of accounts of the trust for the period from 1999-2000 to 2005-06. As per a letter from them, a report for the years 1999-2000 to 2002-03 is submitted however, but cash books and certain other accounts are not available for the year 2003-04 and books of accounts for the year

2004-05 and 2005-06 were not produced till date. It appears that the police had sought consent of the waqf board to appoint a special auditor and by letter dated 23rd February, 2007, the waqf board gave its no objection and therefore, the police got certain accounts scrutinised and therefore, Rajesh Gopal Krishna and Company, chartered accountants gave this letter within four days. In my opinion, it would be impossible for the said firm to scrutinise and verify all the account books and give a report. There is nothing to show that necessary notice was given to the concerned parties to produce account books for the period 2003-04 onwards. Report submitted by Rajesh Krishna Gopal and Company only raises question about two transactions. One is pertaining to receipt dated 1st December, 2001 issued against a deposit of Rs.1,10,000/- and another is about receipt no.13 dated 1-2-2003 under which a deposit of Rs.1,10,000/- was received. It is contended that these amounts are not taken in the cash book. In the audit report for a period of 4 years no objection could be taken except these two entries. Taking into consideration the audit report of the official auditor and report submitted by Mr.Keny, the commissioner appointed by the Assistant Charity Commissioner as well as the report received from Rajesh Krishna Gopal and Compnay, I am satisfied that the custodial interrogation

of the respondent is not necessary for the investigation of the case. The learned Additional Sessions Judge has passed the impugned order after giving sufficient opportunity to the State to place material before it and he came to a considered opinion and passed the impugned order. I do not see any reason to take a different view.

4. Application stands rejected.

(J.H.Bhatia, J.)